

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANT: Roy S. O'Connor 2005 Revocable Trust

CASE 40A-0284-R-2023

40A 1621-00

40A 1622-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 40A 1621-00 and 40A 1622-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims each received an issue remark. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims

examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into Water Court Case 40A-0284-R-2023 on May 24, 2023. The consolidation order explained that this case resulted from a previous Water Court Case and set a filing deadline by which Claimant could clarify proposed legal land descriptions.

FINDINGS OF FACT

1. Claim 40A 1621-00 appeared with the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON MUSSELSHELL RIVER WITH A PRIORITY DATE PREDATING CASE NO. 1148, GOLDEN VALLEY COUNTY.

2. Claim 40A 1622-00 appeared with the following issue remark:

THE POINT OF DIVERSION COULD NOT BE REFINED FROM THE INFORMATION IN THE CLAIM.

Priority Date Issue Remark on Claim 40A 1621-00

3. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. Decrees were often the result of a specific controversy, and multiple decrees may have been issued on the same source due to the piecemeal nature of water rights adjudication. *See* Albert Stone, *Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

4. There are numerous reasons why this claimed right may not have appeared in Case No. 1147 in Golden Valley County. However, it is the burden of objectors and other interested parties to establish, by a preponderance of the evidence, that the priority date is something other than what is claimed. No objections or notices of intent to appear were filed to this claim.

Point of Diversion Issue Remark on Claim 40A 1622-00

5. The Court's consolidation order included a proposal that the point of diversion be described as SESW of Section 34, T7N, R18E. This proposal was based on information Mr. O' Connor provided in a previous case, including proposed legal descriptions and GPS coordinates. The Court included Mr. O' Connor's initial proposal with the consolidation order. The order indicated that if the Court did not receive a response, the Court would modify the point of diversion as proposed in the May 24, 2023 order.

6. The Court did not receive a response.

7. The legal land description of SESW of Section 34, T7N, R18E is across the quarter-section line from the claimed point of diversion and place of use of SWSE of Section 34, T7N, R18E and would more accurately describe the historical point of diversion and place of use.

8. The point of diversion of Claim 40A 1622-00 should be described as SESW of Section 34, T7N, R18E.

9. The issue remark should be removed from each above- captioned claim.

CONCLUSIONS OF LAW

1. The changes to the point of diversion and place of use of Claim 40A 1622-00 may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. No changes should be made to Claim 40A 1621-00 because the priority date issue remark does not overcome the prima facie status of the claim.

3. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are

served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Roy S. O'Connor 2005 Revocable Trust
% Trustee
125 Bank St #300
Missoula, MT 59802

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 1621-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: O CONNOR, ROY S 2005 REVOCABLE TRUST
% TRUSTEE
125 BANK ST #300
MISSOULA, MT 59802 4413

Priority Date: MAY 20, 1899

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 203.00

Source Name: MUSSELSHELL RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	32	7N	18E	WHEATLAND
Period of Diversion:	MARCH 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	TIERNEY DITCH NO. 401A					
Period of Use:	MARCH 15 TO OCTOBER 15					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	13.00		N2NENE	4	6N	18E	WHEATLAND
2	80.00		SE	33	7N	18E	WHEATLAND
3	50.00		W2	33	7N	18E	WHEATLAND
4	14.00		W2W2SE	34	7N	18E	WHEATLAND
5	46.00		S2SW	34	7N	18E	WHEATLAND
Total:	203.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1621-00

123718-00

211381-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 1622-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: O CONNOR, ROY S 2005 REVOCABLE TRUST
% TRUSTEE
125 BANK ST #300
MISSOULA, MT 59802 4413

Priority Date: DECEMBER 28, 1971

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 6.00 AC-FT

Households: 2

Maximum Acres: 2.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	34	7N	18E	WHEATLAND
Period of Diversion: JULY 1 TO JUNE 30						
Diversion Means: WELL						
Period of Use: JULY 1 TO JUNE 30						

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		SESW	34	7N	18E	WHEATLAND
Total:	2.00						